

## **FINDING OF EMERGENCY**

The State Allocation Board (SAB) finds that an emergency exists, and that the proposed regulations are necessary for immediate action to avoid serious harm to the public peace, health, safety, or general welfare, pursuant to Government Code Section 11342.545.

### **Specific Facts Showing the Need for Immediate Action**

Immediate action is needed to approve proposed regulations, including two associated forms for the California Preschool, Transitional Kindergarten, Full-Day Kindergarten Facilities Grant Program (Program). The Governor signed into law, on June 30, 2022, Assembly Bill (AB) 181, Chapter 52, Statutes of 2022 [the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill]. This bill appropriated an additional \$100 million from the General Fund in the 2022/23 fiscal year to the SAB to provide one-time grants. In addition to the \$100 million, the Legislature has declared its intent to appropriate an additional \$550 million from the General Fund in the 2023/24 fiscal year to the SAB for the same purposes. The Program allows school districts that lack the facilities to provide full-day California preschool, full-day transitional kindergarten, and/or full-day kindergarten programs to apply for these one-time grants to construct new school facilities and retrofit existing school facilities for preschool, transitional kindergarten, and kindergarten pupils in full-day programs. The bill allows California community colleges to apply for one-time grants for preschool classrooms provided they meet the eligibility criteria.

Education Code Section 17375(h) states:

“The State Allocation Board may adopt regulations to implement this section. Any regulations adopted pursuant to this section may be adopted as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Title 2 of the Government Code). The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.”

### **Background and Problem Being Resolved**

AB 1808, Chapter 32, Statutes of 2018 [Committee on Budget: Education Finance: education omnibus trailer bill] was originally signed by the Governor on June 27, 2018 and included a one-time General Fund appropriation in the amount of \$100 million for the sole purpose of providing full-day kindergarten classrooms. On July 1, 2019, the Governor signed Senate Bill (SB) 75, Chapter 51, Statutes of 2019, into law [the Education Finance: Education Omnibus Trailer Bill]. This bill appropriated an additional \$300 million from the General Fund to the SAB for the 2019/20 fiscal year. School districts that wished to convert part-day kindergarten programs to full-day kindergarten programs, and for those school districts lacking the facilities to provide full-day kindergarten instruction could apply for these one-time grants to construct new school facilities or retrofit existing school facilities. On June 29, 2020, the Governor signed SB 98, Chapter 24, Statutes of 2020, which rescinded the \$300 million in additional program funding previously appropriated in SB 75 but maintained Program provisions such as the local matching share for school districts that were converting from a part-day program to a full-day program and allowed school districts to retain project savings. AB 130, Chapter 44, Statutes of 2021, provided \$490 million from the General Fund for the 2021/22 fiscal year to the SAB to provide one-time grants. School districts that lacked the facilities to provide full-day California preschool,

full-day transitional kindergarten, and/or full-day kindergarten programs could apply for these one-time grants to construct new school facilities and retrofit existing school facilities. The latest bill, AB 181, Chapter 52, Statutes of 2022, provides \$100 million in the 2022/23 fiscal year to the SAB to continue providing one-time grants for the construction of new school facilities and the retrofitting of existing school facilities for preschool, transitional kindergarten, and kindergarten pupils in full-day programs. It is the Legislature's intent to appropriate an additional \$550 million from the General Fund in the 2023/24 fiscal year for the same one-time purposes. The bill also expands the Program to allow California community colleges to apply for one-time grants for preschool classrooms provided they meet the eligibility criteria.

The problem being resolved is not a problem, but rather a funding opportunity in which the Program expands to community colleges to construct new classrooms or retrofit existing classrooms to house full-day California state preschool programs. In addition to the new Program funding, there are clarifications to Program requirements for the inclusion of community colleges, as well as changes to the dates for the fourth filing round. Beginning February 1, 2023 through March 2, 2023 applicants will be able to submit applications for the Program. The Office of Public School Construction (OPSC) and the California Department of Education (CDE) will work collaboratively, on a project-by-project basis, to determine if an application should be limited to a retrofit project, or whether the applicant can choose between funding to retrofit existing facilities or to build new facilities. This will ensure a prudent use of general fund dollars, integrity of school projects, and prevents the funding from being expended to unnecessarily construct new classrooms.

OPSC performed a search on whether the proposed regulatory amendments are consistent and compatible with existing State laws and regulations. After performing the search, OPSC, on behalf of the SAB, has determined that AB 181, Chapter 52, Statutes of 2022, [the Committee on Budget: Education Finance: Education Omnibus Budget Trailer Bill], was created to expand, clarify, and make modifications to the existing Program. There are no other programs or regulations in existence that provide one-time grants to school districts, or include California community colleges, for the purposes of constructing new school facilities or retrofitting existing school facilities in order to house full-day California preschool, full-day transitional kindergarten and full-day kindergarten programs. Therefore, the proposed regulatory amendments are determined to be consistent and compatible with existing State laws and regulations. Proceeding with the implementation of the proposed regulatory amendments and forms will enhance applicants' awareness when partnering with the State and will help to maintain Program integrity.

OPSC, on behalf of the SAB, will notify school districts and other interested parties of its intent to submit the proposed regulatory amendments and forms to the Office of Administrative Law (OAL) in October 2022, pursuant to Government Code Section 11346.1(a)(2). The proposed regulatory amendments and forms will be attached and may be viewed on OPSC's website at: <https://www.dgs.ca.gov/OPSC/Resources/Page-Content/Office-of-Public-School-Construction-Resources-List-Folder/Laws-and-Regulations>, then scroll down to "California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program," under California Preschool, Transitional Kindergarten and FDK Pending Regulatory Changes and click on the AB 1302 Emergency Notice, Finding of Emergency, the proposed regulation text, and forms (SAB 70-01 and SAB 70-03).

## **Authority and Reference Citations**

Authority: Sections 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(2)(A), 17375(h) of the Education Code; 16304 and 16304.1 of the Government Code.

Reference: Sections 17070.15, 17075, 17075.10, 17075.15, 17280, 17375, 17375(a), 17375(b), 17375(b)(2), 17375(b)(2)(A), 17375(b)(2)(B), 17375(b)(3), 17375(b)(4), 17375(h), 42238.01(a) of the Education Code.

## **Information Digest/Policy Overview Statement**

At its meeting on September 21, 2022, the SAB adopted on an emergency basis proposed regulatory amendments, as well as amendments to two associated forms. Initially, the Program was created through AB 1808, Chapter 32, Statutes of 2018, and included a one-time General Fund appropriation in the amount of \$100 million for the sole purpose of providing full-day kindergarten classrooms. Since that time, however, several bills became law that appropriated, rescinded, and re-appropriated general fund dollars. The latest bill, AB 181, Chapter 52, Statutes of 2022, was signed by the Governor on June 30, 2022, and made \$100 million from the General Fund available to the SAB for apportioning one-time grants to school districts that lack the facilities to provide full-day California preschool, transitional kindergarten and kindergarten programs. In addition to the \$100 million, the Legislature has declared its intent to appropriate an additional \$550 million from the General Fund in the 2023/24 fiscal year to the SAB for the same purposes. The bill allows California community colleges to apply for one-time grants for preschool classrooms provided they meet the eligibility criteria.

## **Summary of the Proposed Regulations**

A summary of the proposed regulatory amendments, including two associated forms, are as follows:

Existing Regulation Section 1860.2 represents a set of defined words and terms used exclusively for these regulations. These definitions provide clarity to OPSC and school districts on program concepts and requirements. The proposed amendments expand the definition of “School District” by including community college districts that operate a preschool program on behalf of, or in lieu of, a school district or county office of education. This is in alignment with the statute. Two of the Program forms (SAB 70-01 and SAB 70-03) are being revised which changes the revision dates.

Existing Regulation Section 1860.3 sets forth general requirements that all school districts seeking program funding must meet. Specifically, participating school districts are required to complete and file with OPSC the Form SAB 70-01, *Application for Funding*, (which is incorporated by reference), and all required documents as identified in the Specific Instructions section of the Form SAB 70-01. The proposed amendments set forth the statute by which these amendments are being made and sets forth the General Fund appropriation for the expanded Program.

Existing Regulation Section 1860.4 provides general funding guidelines for the program that apply to all applicants that participate in the program. The proposed amendments specify where the funding is being made available [subsection (c) is for the 2022-23 Budget Act and subsection (d) is for the 2023-24 Budget Act] and sets forth the date by which the funding must be encumbered (June 30, 2025 and June 30, 2026, respectively). It is further clarified that any

funds returned prior to this date will be returned to the program account, while funds returned after this date will be returned to the General Fund. The encumbered dates of June 30, 2025 and June 30, 2026 are not in statute, but follow State budgeting practices.

Existing Regulation Section 1860.5 sets forth eligibility criteria that school districts must meet in order to apply for full-day kindergarten program funding. The proposed amendments set forth requirements that kindergarten classrooms must meet in order to ensure new construction and/or retrofit funding is used to construct classrooms that match Title 5 requirements.

Existing Regulation Section 1860.5.1 sets forth eligibility criteria that school districts must meet in order to apply for transitional kindergarten program funding. The proposed amendments set forth requirements that kindergarten classrooms must meet in order to ensure new construction and/or retrofit funding is used to construct classrooms that match Title 5 requirements.

Existing Regulation Section 1860.6 sets forth the application submittal process, which established two 30-calendar day funding rounds for school districts to request apportionments of available program funds. The proposed amendments change the fourth funding round in subsection (d) from April 1, 2023 and on or before April 30, 2023 to February 1, 2023 and on or before March 2, 2023. This change allows for additional time to review the applications received because there is \$100 million in General Fund allocations from the 2022-23 Budget Act that will have been appropriated to projects in this filing round.

Existing Regulation Section 1860.14 sets forth criteria for school districts applying for financial hardship, as allowed in Education Code Section 17375(b)(2)(A). If a school district is unable to meet the financial requirements for either all or a portion to match their share of the project with the state and can prove a financial hardship, then they may qualify for hardship assistance pursuant to Education Code Section 17075.10. This Section is identical to the financial hardship provisions as defined in the SFP Regulations. OPSC will review financial records of the school district to determine if the school district qualifies for financial hardship. The analysis will include all capital facility accounts, including but not limited to developer fees, Certificates of Participation, federal grants, bond funds either encumbered, unencumbered or authorized but not sold, etc. Any funds that have not been encumbered, either through contracts or otherwise, will be considered available funds for the matching share. The proposed amendment deletes the language in subsection (a)(4) and specifies that it is a County Superintendent of Schools. This is consistent with Education Code Section 17375(b)(2)(A).

Existing Regulation Section 1860.15 specifies that if the number of Approved Applications received exceeds the funding available for the funding round, then the funding priority will be based on a school district's preference points. Education Code Section 17375(b)(2) states that priority for Program grants will be given to school districts that qualify for financial hardship and/or that have a high population of pupils who are eligible for Free and Reduced Price School Meals (FRPM). This Section creates a system of preference points in order to determine project funding order. A maximum of 80 preference points may be earned in each funding round for each school district. A school district's preference points will be calculated into two categories. Based on a sliding scale currently used in the SFP for the Charter School Facilities Program, a sliding scale was created to determine the percentage of students a school district has eligible for FRPM. Points begin at four points for 60-65 percent of students eligible for FRMP, while 40 points will be earned if 100 percent of students within the school district qualify for FRPM. If a school district has been qualified for financial hardship by OPSC and is unable to contribute a portion or all of its matching share, the school district earns 40 points. The proposed amendments in subsection (b)(1) adds community colleges as part of the funding criteria for the

calculation of preference points. This is in alignment with the statute. The stand-alone sentence under subsection (b)(1) has been numbered as (2). This is considered a non-substantive change.

Existing Regulation Section 1860.19 specifies how remaining funding may be used after project completion. Project savings and unexpended funds are different types of remaining funds from Program projects. School districts that are not financial hardship are able to expend their project savings, including interest, that are not needed for the Program project on other high priority capital facility needs of the school district. Any savings not expended within one year of project completion must be returned to the State. School districts that are financial hardship that have any unexpended funds from the Program project, that were not spent on eligible expenditures, and the project was funded from the funding in Section 1860.3(a), must be returned to the State upon completion of the project. Any interest earned on State funds for financial hardship grant funding that is not expended on eligible project expenditures must also be returned to the State to help reduce the financial hardship contribution for that project. A school district is only required to return unexpended funds up to the amount of the financial hardship grant provided by the SAB. The proposed amendment provides that all projects receiving funding under Section 1860.3(b) and 1860.3(c) are not required to return savings, including interest earned on State funds, if expended or encumbered for professional development to build capacity for the implementation of full-day kindergarten programs.

Existing Form SAB 70-01, *Application for Funding*, (which is incorporated by reference) is used by school districts to apply for program funding. The form also serves as a certification from the district regarding compliance with requirements of the law and Program Regulations. School districts must submit this form during the funding rounds described in Regulation Section 1860.6. OPSC will use this form in order to collect the information necessary to calculate the amount of grants applicable to the project and to determine project funding order. The proposed amendments: 1) page 1, under “Specific Instructions” #1.a. A New Construction Grant, fourth and fifth (new) bullets, as well as #1.c. A Retrofit Grant, fourth and fifth (new) bullets are being added as these are documents the SAB requires in order to support the funding of projects and to efficiently administer the Program; and 2) page 2, #2. School Site Enrollment Data, 5<sup>th</sup> and 7<sup>th</sup> sentences: adding the “T” before K-12 and the “P” before K-12 refers to Transitional Kindergarten and PreK (preschool).

Existing Form SAB 70-03, *Expenditure Report*, (which is incorporated by reference) is used by school districts to report their project savings and unexpended funds. Expenditure reports must be submitted within one year of final fund release or at the completion of the Program project. A final savings report must be submitted within one year of the completion of the project. Financial hardship projects must submit their unexpended funds at the completion of their project. OPSC will use the information provided on this form to ensure that expenditures made by the school districts for Program projects comply with statute and other applicable State requirements pertaining to construction. The proposed amendments: 1) page 1, 2<sup>nd</sup> column, last sentence “through OPSC Online or to” was added to inform applicants that document submittals could be submitted electronically through the OPSC Online system; and 2) page 2, #4. the fourth bullet was struck out and relocated as the last bullet.

### **Mandate on Local Agencies or School Districts**

The Executive Officer of the SAB has determined that the proposed regulations, along with the two associated forms, do not impose a mandate or a mandate requiring reimbursement by the

State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. It will not require school districts, county offices of education or community colleges to incur additional costs in order to comply with the proposed regulations.

### **Cost Estimate**

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact that might result from the proposed regulatory action and it has been determined that:

- There will be no costs or savings to the State.
- There will be no non-discretionary costs or savings to local agencies.
- There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.
- There will be no costs or savings in federal funding to the State.

### **Documents Incorporated by Reference**

Form SAB 70-01, *Application for Funding*, (Rev. ~~04/22~~ 09/22), referenced in Regulation Section 1860.2 and is incorporated by reference.

Form SAB 70-03, *Expenditure Report*, (Rev. ~~04/22~~ 09/22), referenced in Regulation Section 1860.2 and is incorporated by reference.

### **Technical Documents Relied Upon**

The SAB's Action Item, dated September 21, 2022, REPORT OF THE EXECUTIVE OFFICER, entitled "Proposed Amendments to the California Preschool, Transitional Kindergarten and Full-Day Kindergarten Facilities Grant Program."

### **Benefits of the Proposed Regulations**

There are benefits associated with the proposed amendments. School districts will benefit in order to provide kindergarten classrooms if they lack the facilities and have the need to operate full-day transitional kindergarten and full-day kindergarten programs. School districts, county offices of education, and community colleges will also benefit in order to build new or expand existing classrooms to house full-day California state preschool programs. In addition, the State of California will benefit from the proposed regulations as the regulations may generate the need for school construction-related industries to expand their businesses, or in some cases may create new businesses, based on the demand on these industries when general fund dollars are released to school districts, county offices of education, and community colleges to complete their projects.